SYNOPSIS

ON

ANALYSIS AND ESTABLISH PROTOCOL OF

ADVOCATE/JUDICIAL AUTHORITIES FOR ALLOTMENT OF

CASES

UNDER THE GUIDENCE

OF

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''बेटी बचाओ, बेटी पढ़ाओ''

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INTRODUCTION

The Indian constitution divided the government in to three different organs namely.
All three have different duties and functions
Executive- president – it executes and enforces law made by legislation
Legislation – it forms laws and procedure
Judiciary – it interprets the law

The Indian Judicial System occupies among the trinity, the highest place in people's conscience and confidence. The judiciary is looked upon as the last PLACE of hope when other government machinery fails to do their jobs.

There are more than 3crore cases pending in different courts of India. Many of these cases are pending for more than 10 years.

Approximate number of cases pending in Supreme Court, High Courts and District and Subordinate courts in India.

- Around 60,000 cases are pending in Supreme Court.
- Around 42lakhs cases are pending in different High Courts.
- Around 2.7crore cases pending in District and Sub-ordinate Courts

JUDICIAL ACCOUNTABILITY

Accountability is a position where the person takes responsibility for its actions and performances by either giving reasons or for avoiding punishment

The relation here is regarding some standard of performance let it be its nature of performance or a standard he has to meet. With these features of accountability in mind, there arises the need to mention that parties in an accountability relation are obligated to provide or receive information. A clear example of the judiciary being unaccountable is itself being exempted from the Right to Information Act,2002 and fog away transparency.

APPOINTMENT OF JUDGES V. JUDICIAL INDEPENDENCE

The Appointment of judges is another controversial topic where the judiciary is resisting transparency from the longest of times.

The Constitution merely states that the President will appoint Supreme Court judges in consultation with the Chief Justice of India and such other judges of Supreme Court, as he may deem necessary.

ALLOCATION OF CASES V. TRANSPARENCY IN JUDICIARY

The sole authority to allocate cases is given to the chief justice of India. The chief justice puts together benches as well as transfers cases whenever he feels like.

There is no proper protocol or method or criteria that are followed when it comes to allocating these cases to certain judicial officials.

On January 12, 2018, a rebellion against the then chief justice of India Deepak Misra was in news. Justice Chalameshwar, Justice Rajan Gogoi, Justice Madan B Lokur and Justice Kurian Joseph had written to the judge expressing their concerns and asking for an explanation for the allocation of cases.

REVIEW OF LITERATURE

1. Jawaharlal Nehru, in 19thMarch, 1955, while addressing the members of the Punjab High Court at the inauguration of its new building in Chandigarh, said, "Justice in India should be simple, speedy and cheap."
2. The Supreme Court in Harish Uppals v. Union of India, case observed that lawyers had no right to go on strike or give a call for boycott not even a token strike, will certainly discourage the lawyer to go on strike unless they really had a strong cause.
3. The Supreme Court in Ganesh Narayan v. S. Bangarappa, observed that "the slow motion becomes much slower motion when politically powerful or high and influential persons figure as accused".
4. The former Chief Justice of India, Justice B. P. Singh said, "the situation today is so grim that if a poor is able to reach up to the stage of a High Court, it should be considered as an achievement".
5. The legal luminary like Mr.Nani Palkhiwala advocate Supreme Court of India opined that, "Justice in common parlance is considered as blind, but in India, it is lame too and hops on crutches. It is on the verge of collapse with more than 30 million cases clogging the system".

OBJECTIVES OF THE STUDY:

This research work has been carried out with the following objectives:

1. To expound the concept of equal distribution of cases and speedy trial in Indian justice system and underline the basic feature of the systems obtaining in India;

2. To examine the fundamental principles embodied in the Constitution, regarding speedy trial, as fundamental right, and institutions involved in the administration of justice, namely, the police, the courts, the prosecution and the prisons.

3. To enquire how principles of procedural law are adhered to in conducting trial and in managing the operational aspects of the system;

4. To study the legal and Constitutional position of the new institutions established by the state to attend as alternative dispute resolution in furtherance of speedy justice.

5. To examine the position of various committees. Commissions reports and its recommendations on speedy trial.

6. To suggest some possible measures to speedy dispensation of criminal cases.

7. To study the actual, real-time 'Flow of Cases' from the date of institution till final disposal.

8. To identify the variables responsible for delays in disposal of cases.

9. To assess realistic time lines needed for the final disposal of newly instituted cases relating to different jurisdictions.

RESEARCH METHODOLOGY

Keeping in view the nature of research problem and the hypotheses formulated in this regard, research has been carried out on the subject by following the Doctrinal and Analytical Methods of Research.

The research methodology includes the gathering of data and information so that they may be analyzed and solution on the problem stated may be made. This may contain collecting the data by the way of newspapers, articles, books, journals etc.
The research will be based on current practices and systems in place and the burden they have on departments.

SOURCE OF INFORMATION

• Case studies of cases already resolved.

• Other sources-Books, journals, magazines, previous research works, published and unpublished articles, news paper releases, seminar reports, notices & brochures.

• Web references

HYPOTHESIS

In order to prove the above given objectives following hypothesis were framed, which will be experienced in the further sections of this study on certain parameters. In order to attain the above said objectives, following hypothesis will be tested.

1. Indian justice system is suffering from several pernicious defects such as delayed disposal of cases and huge pendency.

2. Seedy trial is the essence of Indian justice system and there can be no doubt the delay in trial by itself constitutes denial of justice.

3. The worry, anxiety, expense and disturbance to prisoner's vocation and peace resulting from an unduly prolonged investigation, inquiry and trial should be minimal.

4. A new jurisprudence is evolving the world over particularly with the help of judicial decisions, whereby prisoners are treated as human beings and speedy trial as their human right.

5. The state is under a Constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the state.

CONCLUSION

1. Increase in the awareness of rights by common man

The recent socio-economic advances and the resultant awareness of legal rights, has given courage to common people to approach courts of law for justice.

2. New mechanisms (Eg: PIL) and new rights (Eg: RTI)

As government explicit made legislation for new rights like 'Right to Information' and 'Right to Education', aggrieved parties started to increasingly knock the doors of justice. Also, active judiciary has invented new devices like Public Interest Litigation which gave again resulted in more cases.

3. There are not enough judges

There are not enough judges (only around 21,000). Current Judge to Population ratio is 10 to 1 million. The Law Commission report in 1987 recommends atleast 50 to 1 million. Population has increased by over 25 crore since 1987.

The Centre says the States should take the lead in increasing the number of judges and the States say Centre should take the lead. As this tug-of-war goes on, judges' strength remains the same and litigants remain in jail.

More than half the posts are vacant. There is a conflict between Judiciary and Executive regarding the appointment of Judges to Supreme Court and various High Courts.

Colonial legacies like paid long vacations – at a time when the number of judges is low, the appointed judges are taking long vacations, especially in High Courts.

4. There are not enough courts

- Indian judiciary has insufficient resources. Both Center and States are not interested in increasing spending with respect to the judiciary.

- Budgetary allocations for the whole judiciary are a pathetic 0.1% to 0.4% of the whole budget.
- India needs more courts and more benches.
- Modernization and computerization have not reached all courts.

5. There is too much litigation from the Government Side

The government is the largest litigant in India, responsible for nearly half the pending cases. Many of them are actually cases of one department of the government suing another, leaving decision-making to the courts. Also, it most of the cases, when government files a case, it is seen that the government side fails to prove the point.

CONSEQUENCES OF PENDING CASES IN INDIAN COURTS

- Denies the poor man and under trial prisoners their due of justice.

- Economic reforms remain only on paper without speedier justice system.
- Foreign investors are increasingly doubtful about the timely delivery of justice, which affects the success of programs like ‘Make in India’.
- Judiciary is unable to handle the “avalanche” of litigation. Judiciary becomes overworked and lose its efficiency. Justice delayed is justice denied and Justice hurried is justice buried.